WITNESSES—HUSBAND AND WIFE—CRIMES AGAINST EACH OTHER.—A statute provided that husband or wife could testify one against the other "in a criminal prosecution for a crime committed one against the other." *Held,* the wife is a competent witness against the husband in a criminal prosecution of the latter for failure to support the children. *Hunter* v. *State* (Okl.), 134 Pac. 1134.

As a general rule at common law, a husband or wife is not a competent witness against the other party to the marriage. 1628, SIR EDWARD COKE, COMMENTARY UPON LITTLETON, 6b; 4 WIGMORE, EV. 3036. This rule, however, was subject to qualification. Owing to the privacy of the marital relation it is peculiarily open to the commission of certain classes of crimes to which the injured party is the sole witness. To hold witness incompetent would be to place the weaker party at the mercy of a tyrannical consort. An exception to the main rule was therefore recognized and one party to a marriage could testify against the other where the crime was directly against the person of such party. *Soule's Case,* 5 Greenl. (Me.) 407. This exception was placed on the ground of necessity, not the ordinary ground of general necessity in evidence, the object of which was merely to secure a witness, but a special necessity, the necessity of affording protection to the person of one from the actual physical violence of the other. *Bentley* v. *Cooke,* 3 Doug. 422. But the scope of this exception did not extend beyond those classes of crimes giving rise to the exception, those involving actual bodily violence by one consort against the other. It was accordingly limited to such crimes as assault and battery and other crimes of corporal violence *Rex* v. *Azir,* 1 Stra. 633.

Modern statutes preserving the general rule usually state the exception "crimes against the other." In construing these statutes many courts have greatly enlarged the scope of the exception as recognized at common law. Under a statute worded "crime against the other" bigamy has been included. *State* v. *Sloan,* 55 Ia. 217, 7 N. W. 516. But see *Basset* v. *United States,* 137 U. S. 496. Adultery is included under a similar statute. *State* v. *Bennett,* 31 Ia. 24. But see *State* v. *Armstrong,* 4 Minn. 251. Likewise incest. *State* v. *Chambers,* 87 Ia. 1, 53 N. W. 1090, 43 Am. St. Rep. 349. But see *State* v. *Burt,* 17 S. D. 7, 94 N. W. 409, 67 L. R. A. 172, 106 Am. St. Rep. 759. Crimes against the property of either party are usually held not to come within the meaning of such statutes, thus in the case of arson. *State* v. *Kephart,* 56 Wash. 561, 106 Pac. 165.

It is difficult to reconcile these decisions with accepted legal principles. Failure to support the children of the marriage, bigamy, adultery and incest are more directly crimes against the marital relation than against either party to it. Such holdings can only be justified by a very loose construction of the words "crime against the other;" and these statutes being penal in their nature should receive a strict construction. Again these statutes are declaratory of the common law and should be governed in their interpretation by the doctrine as accepted at common law.

The general rule has been subjected to much adverse criticism. 4 WIGMORE EV. 3037 *et seq.* The motive actuating the courts in making such liberal constructions of these statutes has been the amelioration of this general rule. But it is suggested that this is a matter for legislative remedy, not of judicial intermeddling involving violations of accepted legal principles of statutory construction.

WITNESSES — EFFECT OF FALSE TESTIMONY — PRESUMPTIONS. — Defendant had dynamite caps in his possession upon his farm. He sold farm to plaintiff. Later plaintiff's minor son was injured by the explosion of a dynamite cap, which, it is claimed, was picked up by a child in the barnyard. While defendant testified that he had disposed of the caps before the occurrence of the injury, witnesses testified that he had previously denied ever having had any caps on the premises. *Held,* it is a question for the jury, and if they believe the defendant gave a false account of the disposition of the caps, they are at liberty to infer that the truth would be unfavorable to him. *Eckart* v. *Kiel* (Minn.), 143 N. W. 122.

Statutes allowing parties to a civil suit to testify place such persons on the same ground as to competency as other witnesses, their interest affecting their credibility only. *Cowles* v. *Bacon,* 21 Conn. 451, 56 Am. Dec. 371; *Cutler* v. *Succession of Collins,* 37 La. Ann. 95.

The mere fact that a party to a suit does not offer himself as a witness is not ground for an inference that his testimony would be unfavorable to his side of the controversy. *City of New Orleans* v. *Gaunthreaux* 32 La. Ann. 1126. But the non-appearance of a party litigant, or his failure to testify as to facts material to his case and peculiarly within his own knowledge, or his refusal to produce evidence in his possession, creates a presumption that the truth if made to appear would be unfavorable to his contention. *Cole* v. *Lake Shore, etc., R. Co.,* 95 Mich. 77, 54 N. W. 638; *Central Stock, etc., Exch.* v. *Chicago Bd. of Trade,* 196 Ill 396, 63 N. E. 740; *Bastrop State Bank* v. *Levy,* 106 La. 586, 31 So. 740; *Heath* v. *Waters,* 40 Mich. 457; *Kirby* v. *Tallmadge,* 160 U. S. 379. Under the doctrine, *falsus in uno falsus in omnibus,* the jury may reject the entire testimony of a witness when he willfully testifies falsely to a material fact, though it is not obliged to do so. *Mann* v. *Arkansas, etc., Co,* 24 Fed. 261; *Rider* v. *People,* 110 Ill. 11; *Reynolds* v. *Greenbaum,* 80 Ill. 416. And attempts to bribe or intimidate a witness, or to conceal evidence, or intentional failure to produce the witness who was in the best position to relate the true circumstances of the case, or intentional falsehoods as to a material fact by the defendant, are facts from which the jury are at liberty to presume that the truth, if revealed, would be unfavorable to the cause of the defendant. *Chicago City R. Co.* v. *McMahon,* 103 Ill. 485; *Keeiser* v. *State,* 154 Ind. 242, 56 N. E. 232; *Commonwealth* v. *Wallace,* 203 Ill. 306, 67 N. E. 799; *State* v. *Hogan,* 67 Conn. 581, 35 Atl. 508; *Commonwealth* v. *Devancy,* 182 Mass. 33, 64 N. E. 402; *State* v. *Benner,* 16 Me. 267.